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In re Application of	:	
HASLING	:	DECISION ON
U.S. Application No.: 09/831,057	:	
PCT No.: PCT/GB99/03574	:	PETITION UNDER
Int. Filing Date: 28 October 1999	:	
Priority Date: 06 November 1998	:	37 CFR 1.47(b)
Atty Docket No.: 516.007USU	:	
For: POLYMERISABLE SURFACTANTS	:	

This decision is in response to applicant's "Petition Under 37 CFR 1.47 (b)" filed 16 January 2002 in the United States Patent and Trademark Office (USPTO).

### **BACKGROUND**

On 28 October 1999, applicant filed international application PCT/GB99/03574, which claimed priority of an earlier application filed 06 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 18 May 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 15 May 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 06 May 2001.

On 04 May 2001, applicant filed a transmittal letter for entry into the national stage for the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371 (c) (1); a copy of the International Application as filed as required by 35 U.S.C. 371(c)(2); a First Preliminary Amendment; a copy of the International Preliminary Examination Report and a copy of the Written Opinion. Applicant did not include an executed oath or declaration of the inventor.

On 16 July 2001, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date and providing a surcharge of \$130.00 for providing the oath or declaration later than the appropriate 20 or 30 months from the earliest priority date. (37 CFR 1.492(e)). Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 16 January 2002, applicant responded with the present petition, a petition for a four month extension of time, a check in the amount of \$1570.00, (According to applicant: \$130.00 petition fee and \$1440.00 four month extension fee.) and correspondence which included a declaration and power of attorney executed by John A. Shedden, on behalf of the inventor and applicant, Rhodia, Inc. With the filing of the petition for a four-month extension of time and payment of the petition fee, the response is considered to be timely filed.

### DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(I); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the non-signing inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as an agent for the non-signing inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. Applicant has satisfied items (1), (3), (5) and (6).

As to item (2), as stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature." Applicants have not shown that a *bona fide* attempt was made to present the application papers, including the specification, claims, and drawings to Mr. Hasling. The evidence provided does not support the contention that Mr. Hasling has been provided with a complete set of the application papers and refuses to execute an oath or declaration. Rather, it appears from the exhibits submitted that Mr. Hasling has merely been presented with a copy of the declaration and assignment documents for signature. In order to satisfy Item (2) applicant must provide a declaration from an individual with firsthand knowledge of what materials were sent to Mr. Hasling. This conclusion is further supported by applicant's exhibit III, the letter of refusal from Mr. Hasling, in which he explains that he has had little time to investigate the implications of executing a declaration.

As to Item (4), the enclosed declaration and power of attorney is executed by John A. Shedden as an authorized officer of Rhodia, Inc. However, it appears that Mr. Shedden has provided his residence, mailing address and citizenship information rather than that of the 37 CFR 1.47(b) applicant, i.e., Rhodia, Inc. as required.

For the above reasons, it would not be appropriate to accept this application without the signatures of Mr. Hasling.

### CONCLUSION

The petition filed under 37 CFR 1.47(b) is **DISMISSED**.

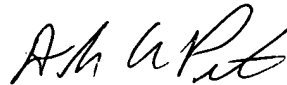
If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mailing date of this decision. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required.

Should status under 37 CFR 1.47(b) not be successfully completed the international application will be viewed as having become **ABANDONED** with respect to the United States of America at midnight at the expiration of the time period set in this decision.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.



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